

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0577P

Sales & Use Tax

Calendar Years 1996, 1997, & 1998

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a sales tax assessment resulting from an audit conducted for the years 1996, 1997, & 1998.

The taxpayer is involved in the development and manufacture of orthopedic surgical implants such as hip, shoulder, knee and wrist implants. The taxpayer has only one business location in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the negligence penalty should be waived as the taxpayer performed their tax duties in a good faith manner and the error in the audit was immaterial.

The Department points out the error in the year of assessment was 24% which the Department considers material. Furthermore, even though the taxpayer has a self-assessing use tax system, material errors were committed in that large capital assets were not self-assessed use tax.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.